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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/660,162	09/12/2000	Mark Robert Sivik	7886	6111

27752 7590 01/27/2004

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EXAMINER

MRUK, BRIAN P

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/660,162

Applicant(s)

SIVIK ET AL.

Examiner

Brian P Mruk

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-43 is/are pending in the application.
- 4a) Of the above claim(s) 42 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Office action is in response to Applicant's amendment filed November 18, 2003. Applicant has amended claims 1, 5, 31 and 38. Claims 7 and 8 have been cancelled. Claims 42 and 43 remain withdrawn from consideration. Currently, claims 1-6 and 9-43 remain pending in the application.
2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office actions, Paper Nos. 8 and 10.
3. The objection of claim 5 is withdrawn in view of applicant's amendments and remarks.
4. The objection of the amendment filed May 27, 2003 under 35 U.S.C. 132 for containing new matter in the disclosure, is maintained for the reasons of record.
5. The rejection of claims 1-6 and 9-41 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, is maintained for the reasons of record.
6. The rejection of claim 36 under 35 U.S.C. 112, second paragraph, is withdrawn in view of applicant's amendments and remarks.

7. The rejection of claims 1-6 and 9-37 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,506,945 is maintained for the reason of record.

### ***Response to Arguments***

8. Applicant's arguments filed November 18, 2003 have been fully considered but they are not persuasive.

The examiner notes that applicant does indeed have support for the claim limitations recited in Groups (i)-(iii) of claim 1. Applicant argues that pages 9 and 10 of the specification provides support for the limitations recited in Groups (iv)-(v) in instant claim 1, and that page 5 of the specification provides support for the limitations recited in instant claims 6 and 10. However, the examiner disagrees. Specifically, the examiner notes that the specification on pages 9 and 10 does not provide support for the limitations "wherein when the cyclic hydrocarbon is an unsubstituted 6 carbon radical or a substituted 7 or 8 carbon radical, R is ....a radical having from about 1 to about 5 carbon atoms" or "R is.....a radical having from about 23 carbon atoms" recited in Groups (iv) and (v) in instant claim 1, and also notes that page 5 of the specification does not provide support for "radicals containing 5 or 6 carbon atoms" recited in instant claims 6 and 10. Furthermore, the examiner cannot find support for these ranges anywhere else in the instant specification. Although applicant's broad disclosure includes radicals containing between 1-30 carbon atoms, the examiner asserts that the picking of specific points between this range, such as 5, 6, 7, 8 or 23, represents new

matter, since these specific points have not been specifically recited anywhere in the instant specification. See ***MPEP 2163.05***.

The examiner notes that applicant will submit a Terminal Disclaimer to overcome the double patenting rejection of instant claims 1-37 over claims 1-17 of U.S. Patent No. 6,506,945.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

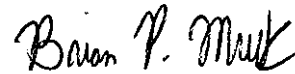
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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

BPM

Brian Mruk  
January 20, 2004

  
Brian P. Mruk  
Patent Examiner  
Tech Center 1700